

Capital Reporting Company
Definition of Solid Waste Proposed Rule - Public Meeting

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In the matter of:

Definition of Solid Waste Proposed Rule

Public Meeting

Thursday, September 15, 2011

10:00 a.m.

Avenue Crown Plaza

160 East Huron Street

Chicago, Illinois 60611

Reported by: Renay Patterson Sebanc

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1 A P P E A R A N C E S

2 EPA REPRESENTATIVES:

3 Ms. Suzanne Rudzinski

4 Ms. Amanda Geldard

5 Ms. Tracy Atagi

6 Ms. Mary Beth Sheridan

7

8 SPEAKERS:

9 Dr. Peter Orris Chicago Physicians for
Social Responsibility

10 Ms. Lisa Evans Earthjustice

11 Mr. Michael Johnson Greenpeace, U.S.A.

12 Mr. Jesse Marquez Coalition for a
Safe Environment

13 Ms. Jane Williams California Communities
14 Against Toxics

15 Mr. Jared Policicchio Environmental Law
Policy Center

16 Ms. Lisa Tuck PSC

17 Mr. Timothy Serie ACA

18 Mr. John Cain Novesis Environmental
19 Strategies

20 Ms. Becky Clayborn Sierra Club

21 Ms. Cheryl Johnson People for Community Recovery

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1 P R O C E E D I N G S

2 MS. RUDZINSKI: Good morning. Thank you for
3 attending today's public meeting of the Environmental
4 Protection Agency's Proposed Rule Regarding the
5 Definition of Solid Waste. Before we begin, I want to
6 thank you for taking time out of your schedules to
7 come and participate today and to address the Proposed
8 Rule. We look forward to getting your comments on it.
9 This is the second of two public meetings that we will
10 be conducting on this Rule. The first meeting was
11 held in Philadelphia, Pennsylvania, on Monday,
12 September 12th.

13 I'm Suzanne Rudzinski. I'm the Director of
14 the EPA's Office of Resource Conservation and
15 Recovery, and I'm going to be opening today's session.
16 Also, today, we have on the panel, Tracy Atagi and
17 Amanda Geldard. We have Mary Beth who will be our
18 timekeeper as well. Before we begin the public
19 meeting, I would like to provide you with a brief
20 description of the Proposed Rule on which we will be
21 taking comments today as well as the logistics on how
22 we plan to run the meeting.

23 On July 22nd, 2011, the EPA published a
24 Proposed Rule requesting comment on potential

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1 revisions to the Definition of Solid Waste or the DSW
2 Rule, as we call it, that portion of the RCRA
3 hazardous waste regulations. The DSW regulations
4 govern how hazardous secondary materials are regulated
5 when they are recycled. In this proposal, EPA is
6 requesting public input on six major proposed
7 revisions to the recycling regulations.

8 First, EPA is proposing to replace the 2008
9 exclusion for hazardous secondary materials
10 transferred to a third-party for reclamation with an
11 alternative hazardous waste standard. Under this
12 alternative standard, the hazardous recyclable
13 material would be subject to hazardous waste
14 regulations with streamlined requirements for
15 generators.

16 For example, we are proposing to allow
17 generators that ship their hazardous secondary
18 materials to a third party for reclamation to
19 accumulate hazardous recyclable material up to one
20 year without a permit or interim status. We are also
21 taking comment on other possible streamlining
22 revisions to the generator requirements.

23 Second, we are proposing to retain the 2008
24 exclusion for hazardous secondary materials that are

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1 reclaimed under the control of the generator, which
2 includes reclamation, on-site/off-site, by the same
3 company, and under tolling agreements. However, we
4 are proposing a clearer definition of when the
5 hazardous secondary materials are contained. This
6 proposed change is meant to address concerns from
7 states and the regulated community that the current
8 contained standard is not adequate. We are also
9 proposing additional recordkeeping requirements.

10 Third, we are proposing to apply the existing
11 regulatory definition of legitimate recycling to all
12 hazardous secondary material and hazardous waste
13 recycling. This clarifies for all generators and
14 reclaimers that all operations regulated as recycling
15 must be legitimate for true recycling, not just
16 treatment or disposal in the guise of recycling. This
17 change is designed to improve compliance and will
18 enable regulatory authorities to better enforce
19 against sham recycling.

20 We are also proposing to make all the
21 legitimacy factors mandatory with a petition process
22 to account for the rare instance when a factor is not
23 met even when the recycling is legitimate. The
24 proposal also requires the recycler to document that

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1 their recycling is legitimate.

2 Fourth, we are proposing a new exclusion from
3 the definition of solid waste for high-value solvents
4 being sent for remanufacturing into similar high-value
5 products. The goal of the remanufacturing exclusion
6 would be to encourage remanufacturing of 18 high-value
7 solvents used in specific high-value manufacturing
8 functions provided certain conditions are met.

9 Fifth, we are proposing revisions to the
10 case-by-case solid waste variances and nonwaste
11 determinations in order to foster greater consistency
12 among the implementing agencies and help ensure the
13 protectiveness of the variances and nonwaste
14 determinations.

15 And last, but not least, we are taking
16 comment on requiring additional safeguards for other
17 existing recycling regulations including requiring
18 facilities to notify their regulatory authority of
19 their activities and to contain their hazardous
20 secondary materials. Additionally, EPA is also
21 releasing for public comment its draft expanded
22 environmental justice analysis for the DSW Rule. This
23 analysis has been completed and has undergone peer
24 review. Both the analysis and the peer-review

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1 comments are available in the docket for the public
2 comment.

3 In conclusion, we believe the DSW Proposed
4 Rule strikes an appropriate balance between
5 encouraging sustainable materials management through
6 hazardous secondary material reclamation while
7 protecting human health and the environment from the
8 risk of hazardous materials.

9 Now, I want to go over some of the logistics
10 for the comment portion of today's meeting. Today's
11 public meeting will work as follows. Speakers, if you
12 have preregistered, you were assigned a time session -
13 afternoon, or evening - when you were scheduled to
14 give your five or ten minutes of testimony. We'll
15 call the speakers to the front. When your name is
16 called, please come on up to this podium and state
17 your name and your affiliation. We'll ask you to
18 spell your name for the court reporter, who is over
19 here (indicating), and will be transcribing the
20 comments for the official record. Once all of the
21 preregistered speakers for this session have had a
22 chance to speak, we're going to call on any that have
23 registered on-site to come up and speak.

24 Testimony is limited to ten minutes. We will

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1 hold up cards. Mary Beth is our cardholder
2 (indicating). What she will be doing is she'll hold
3 up a yellow card when you have one minute left to
4 speak. She will hold up a red card when your time is
5 up, at which point you should stop speaking. When
6 you've completed speaking, please return to your seat.
7 We will not be answering any questions on the rule,
8 but we may, however, be asking clarifying questions of
9 you on your testimony.

10 If you have a written copy of your testimony,
11 please place it in the box that's outside at the
12 registration table, and please remember if you did not
13 get to finish your remarks, your written comments will
14 be entered into the record just as if you had provided
15 them orally. You may also submit additional written
16 comments anytime during the comment period, as
17 explained in the handout that is available at the
18 registration table. Written comments are due by
19 October 20th of this year. These written statements
20 will be considered the same as if you presented them
21 orally. If you would like to testify, but have not
22 yet registered, please do so at the registration desk,
23 and we'll be happy to accommodate you. An overview of
24 the 2011 DSW Proposal, which includes the instructions

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1 on how to submit written comments, can be found at the
2 registration table where you signed up today.

3 Finally, if you have a cell phone, like some
4 of us do, we would appreciate it if you would turn off
5 or at least put it on vibrate. If you need to use
6 your phone at any time during the meeting, please move
7 to the lobby or somewhere outside the meeting room to
8 take the call. We ask for your patience as we
9 proceed. We may need to make some minor adjustments
10 as the day goes along, but greatly appreciate the fact
11 that you've taken the time today to come and
12 participate and to tell us your views. Thank you very
13 much.

14 MS. GELDARD: Okay. We'll go ahead and get
15 started calling speakers up to the podium. Just to
16 reiterate what Suzanne said, when you reach the
17 podium, please state your name, your affiliation, and
18 then please spell your name for the court reporter.

19 So our first speaker this morning will be
20 Dr. Peter Orris.

21 DR. ORRIS: Thank you very much, and I
22 appreciate the adjustment to the schedule so I can run
23 back.

24 My name is Peter Orris, O-r-r-i-s, and I

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1 really appreciate being here today and allowing me to
2 comment. This actually was a topic that was not
3 included in medical school training, and I've been
4 learning more and more about it in recent years. I
5 always considered defining garbage sort of like
6 another famous topic where I didn't know -- quite know
7 how to define it, but I knew it if I looked at it,
8 et cetera. So we're going to make a further effort at
9 that today, I guess.

10 I'm a physician specializing in environmental
11 and occupational medicine. I practice at Stroger
12 Hospital of Cook County where I'm proud to have been
13 the President of the Medical Staff. I'm currently
14 Chief of Occupational and Environmental Medicine at
15 the University of Illinois Medical Center, and I hold
16 professorships on the faculties at the University of
17 Illinois, Rush, and Northwestern.

18 I'm testifying on behalf of Chicago
19 Physicians for Social Responsibility, an advocacy
20 group concerned with the environment, climate change,
21 gun violence, nuclear arms, and their effects on human
22 health. I am not speaking on behalf of the University
23 of Illinois or any of its divisions. Chicago PSR has
24 asked that I represent them today due to my recent

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1 work investigating conditions in the recycling
2 industry and preparing recommendations for best
3 practices to protect both employees within, and
4 communities around, these MRFs, Material Recycling
5 Facilities.

6 I'm here today to support the EPA's Proposal
7 to tighten the standards for hazardous waste recycling
8 operations and to urge the reversal of the Definition
9 of Solid Waste Rule of 2008, which exempted what we
10 understand could be 1.5 million tons of hazardous
11 waste generated by steel and chemical and
12 pharmaceutical companies each year. This current
13 solid waste definition, passed in a gasp of
14 ideologically driven deregulation during the waning
15 years of the last administration, was opposed by state
16 environmental regulators, environmental groups, and
17 responsible elements of the business community.

18 We believe that it is vital that our national
19 regulatory policy be driven by precautionary principle
20 and based on human health concerns, not the
21 pocketbooks of fly-by-night reprocessing firms. A
22 green economy rests on aggressive active recycling
23 with continuous product stewardship by manufacturers,
24 but cannot be achieved at the expense of the health of

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1 recycling workers or their communities.

2 As your agency itself notes, the 2008
3 Definition of Solid Waste Rule allows the possibility
4 that hazards from the process of recycling hazardous
5 materials may adversely impact the health of local
6 communities. These communities are disproportionately
7 those of minority and low-income working people who
8 live around these facilities. This allowance must be
9 removed from the regulations.

10 PSR of Chicago urges that you: Strengthen
11 the standard defining "containment" to prevent
12 releases of hazardous waste during the storage and
13 recycling process; ensure that the escape of hazardous
14 chemicals during recycling are reduced to the lowest
15 technologically feasible and are de minimis with
16 respect to human health; remove the exemption that
17 allows unlimited amounts of hazardous waste to be
18 transferred to "tolling contractors" without essential
19 protections.

20 Further, we urge that this rule provide
21 strict safeguards for hazardous waste recycling
22 involving transfer from one company to another and
23 effective standards for notification, containment, and
24 recordkeeping for hazardous waste recycling

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1 operations.

2 In listening to the summary of the changes
3 that you're proposing, obviously, we are strongly in
4 support of them, and we'd like to wish you all speed
5 in securing support for the regulations. Thank you
6 again.

7 MS. GELDARD: Thank you. Our next speaker is
8 Lisa Evans.

9 MS. EVANS: Thank you. My name is Lisa Evans
10 from Earthjustice. You wanted me to spell my name,
11 E-v-a-n-s. I appreciate the opportunity to speak to
12 you today. I'm senior administrative counsel for
13 Earthjustice, a national nonprofit public interest law
14 firm. Earthjustice represents, without charge,
15 hundreds of public-interested clients in order to
16 reduce water and air pollution and prevent toxic
17 contamination. I worked previously an assistant
18 regional counsel for USEPA in the area of hazardous
19 waste, and I appreciate the opportunity again this
20 morning.

21 I want to first take the occasion to thank
22 EPA for holding two extremely important public
23 meetings on its proposed rule on the definition of
24 solid waste. My comments this morning will be

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1 limited, but Earthjustice will follow up with detailed
2 written comments to the record next month.

3 This morning I will address three essential
4 aspects of the DSW Rule. In the final rule,
5 Earthjustice requests that EPA pay the utmost
6 attention to three things. First, the protection of
7 vulnerable communities. Second, the prevention of
8 releases in the first instance. And third, the
9 consideration of past environmental releases from
10 hazardous waste recycling operations.

11 First, environmental justice. I want to
12 thank EPA for undertaking the first environmental
13 justice analysis of a proposed regulation in the
14 agency's rulemaking history. This is an extremely
15 important milestone that must be acknowledged and
16 applauded. In comments to EPA in 2007 and again in a
17 petition for reconsideration on behalf of the Sierra
18 Club in 2009, we pointed out the disproportionate
19 impact of hazardous waste operations on low-income
20 communities and communities of color with its
21 attendant health threats and environmental
22 degradation. We pointed out that Executive Order
23 12898 signed in 1994 required EPA to study these
24 disproportionate impacts and ensure that the

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1 regulation of hazardous waste recycling addressed such
2 impacts. Earthjustice and leaders in the EJ community
3 requested that EPA take the steps necessary under the
4 1994 order.

5 In 2009, you listened and took action. In
6 2009, EPA launched its first full-scale environmental
7 justice analysis. The study was done with care and
8 involvement of the environmental justice community.
9 As a result, EPA has concluded that the nation's
10 low-income communities and communities of color are,
11 indeed, at a higher risk of injury from the hazardous
12 waste recycling operations exempted by the 2008 DSW
13 Rule.

14 We thank EPA for this careful study which
15 sets an important precedent for all future agency
16 rules, but now we must ask, as required by the
17 executive order, that the findings be taken into
18 account and addressed in the agency's final rule. It
19 is, of course, not enough to simply acknowledge the
20 heightened risk in these communities. This is a code
21 red. EPA's responsibility now is to lessen that
22 hazard level to conditions that ensure safe and
23 healthy neighborhoods for all citizens living near
24 these sites.

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1 Sadly, conditions in and around the Chicago
2 area illustrate graphically the adverse impacts and
3 threats communities are facing as a result of the
4 historic exemptions granted to hazardous waste
5 recycling operations. Take, for instance, the J. Pitt
6 Melt Superfund site located in the Pilsen neighborhood
7 on the lower west side of Chicago. In 2001, the
8 former scrap metal recycling site was found to be
9 contaminated with PCBs, lead, chromium, solvents,
10 friables, asbestos, and other hazardous substances.
11 Nearly 400,000 people live within three miles of the
12 site and 87 percent are people of color and 27 percent
13 live below the poverty level. In addition to the
14 Superfund site, the same neighborhood hosts no less
15 than eight industries that EPA thinks may be recycling
16 hazardous waste under an exemption that could lead to
17 toxic releases.

18 Earthjustice examined -- Earthjustice
19 examined many Chicago neighborhoods and about a dozen
20 zip codes and found many, far too many threats in
21 these communities. I'd like to leave the analyses for
22 the record with EPA (tendered document). These
23 analyses include descriptions of the neighborhoods,
24 their demographics, the Superfund sites, and potential

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1 hazardous waste recyclers currently operating under
2 existing federal exemptions as well as maps of their
3 locations. We plan to augment these initial
4 examinations in our comments in October.

5 Suffice it to say that for the Pilsen
6 community, a few miles from this hearing room, as well
7 as for the rest of the nation, EPA must close the
8 remaining loopholes in the regulation of hazardous
9 waste recycling. These gaps potentially allow 50
10 industries currently operating in these 12 Chicago zip
11 codes to escape standards that would protect these
12 communities, standards that require hazardous waste be
13 securely contained, that prevents accumulation of
14 large quantities of hazardous waste, and that would
15 require the community and first responders to be
16 notified of the hazardous waste activity in their
17 neighborhoods.

18 Now, a bit more briefly, I'd like to touch on
19 the issues of prevention and historic contamination.
20 First, there is no substitute for prevention in the
21 first instance when you're dealing with hazardous
22 waste. And take it from an old hazardous waste EPA
23 lawyer, this is really the watch word, prevention is
24 the watch word of RCRA. Prevention is what's under

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1 RCRA, and its detailed regulations is what prevents
2 Superfund sites and prevents exposure of hazardous
3 chemicals and environmental degradation to those
4 communities living near sites.

5 As Dr. Orris explained, EPA during the Bush
6 administration clearly lost sight of this tenet, and
7 in the 2008 Definition of the Solid Waste Rule
8 deregulated about 1.5 million tons of hazardous waste
9 that was purportedly recycled. Before this change,
10 chemical companies, pharmaceutical makers, and steel
11 manufacturers, and other industries were required to
12 follow strict rules designed to keep communities safe:
13 Closely tracking hazardous waste, storing it in
14 clearly labeled air-tight and leak-proof containers,
15 and obtaining permits for dangerous activities.

16 The 2008 Rule allowed these companies to take
17 advantage of the new loophole, permitting them to turn
18 over their hazardous waste to unlicensed contractors,
19 able to go wherever they want with their poisonous
20 cargoes of waste drums, tanks, and truckloads.

21 EPA has made significant improvements to the
22 2008 Rule that will help in the prevention of harm
23 from recycling operations. However, we would like
24 them to go further. A few of the areas where we feel

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1 the rule must be tightened are removing the exemption
2 for tolling contractors. The tolling contractor
3 exemption is simply a form of third-party recycling
4 where unlimited amounts of hazardous waste can be
5 transferred from place to place without proper
6 controls.

7 Second, the industry must require specific
8 containment standards that are clear and enforceable.
9 EPA has improved the containment standards, but they
10 are still too vague and would present enforcement
11 difficulties. EPA should require the same containment
12 standards that it applies to facilities that treat,
13 store, and dispose of hazardous waste.

14 Third, the agency must clearly define what
15 constitutes a release. The proposed rule allows
16 hazardous chemicals to escape without apparent
17 consequence and without causing the material clearly
18 to be treated as a hazardous waste. And, lastly,
19 among the four I'll mention here -- there will be more
20 in our comments -- EPA should require additional
21 recordkeeping requirements to demonstrate that
22 speculative accumulation is not occurring.

23 Lastly, my third point regarding the evidence
24 of damage that has already occurred, the agency must

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1 base its final rule on the ample evidence of damage
2 from hazardous waste recycling activities. In that
3 vein, I applaud the inclusion of a list of 32
4 hazardous waste recycling industries that would be
5 required to provide notification, keep records of
6 accumulation, document compliance with legitimacy
7 criteria, and, most importantly, store hazardous waste
8 without releases to the environment pursuant to clear
9 containment standards.

10 As EPA has noted, these industries have
11 caused over half of the 223 cases of contamination
12 already documented by EPA. In some cases, these
13 industries have been operating under unwise, unsound,
14 and highly dangerous exemptions for over 25 years. It
15 is well time -- past time to close these gaps.

16 EPA can expect significant pushback from many
17 of the 32 recycling industries. In fact, in a recent
18 e-mail to its members, the Institute of Scrap
19 Recycling Industries called upon its members to
20 protest the proposed rule, which in its words, quote,
21 has the potential to bring the scrap metal recycling
22 industry to a grinding halt. Its failure to regulate
23 the scrap metal recycling industry caused or
24 contributed to the creation of the J. Pitt Melt Shop,

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1 Superfund site, just a few miles from this room.

2 The exemption from regulations enjoyed by the
3 scrap metal industry has contributed to the creation
4 of no less than 52 of EPA's documented damage cases or
5 over 23 percent of the total contaminated sites
6 documented by EPA. EPA must consider the compelling
7 evidence and not be distracted by the predictable
8 Chicken Little pronouncements of the recycling
9 industries.

10 In sum, while the terms of the DSW are
11 unfamiliar to most, it is, in the end, simply a rule
12 about protecting the safety of families and
13 communities, specifically, the ones that don't have
14 the political voice to insist, not in my backyard. An
15 effective DSW Rule is about cradle-to-grave management
16 of hazardous waste even when, and especially when,
17 that waste involves dangerous recycling.

18 I believe EPA has a superior understanding of
19 what it needs to do to keep communities safe. I
20 appreciate the distance the agency has come since 2008
21 and its clear willingness to listen. I am hopeful in
22 the end for a strong and just final rule. Thank you.

23 MS. GELDARD: Thank you. Our next speaker is
24 Michael Johnson.

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1 MR. JOHNSON: My name is Mike Johnson,
2 J-o-h-n-s-o-n. I'm here on behalf of Greenpeace
3 U.S.A., our Chicago staff, and thousands of Greenpeace
4 supporters here in Illinois and hundreds of thousands
5 of supporters across the country. I appreciate being
6 here today and the opportunity to testify before you
7 concerning the tightening of the solid waste disposal
8 regulations here in the U.S. Just months ago, my
9 Greenpeace colleagues and hundreds of Americans whose
10 lives have been altered by toxic coal ash pollution
11 testified in supporting the definition of coal ash as
12 hazardous waste. Dramatic pictures of coal ash waste
13 washing away homes and livelihoods turned our stomachs
14 and inspired us to act.

15 Today's hearing bring to light the proverbial
16 frog in the frying pan. The infiltration of untold
17 chemicals into our air, water, and land from so-called
18 recycling, or perhaps less dramatic in visual form,
19 the end results are just as deadly. Today, we stand
20 before you in defense of thousands across the
21 countries -- across the country who suffer from 25
22 years of politics being put before science and common
23 sense. We stand before you to end the public health
24 assault perpetrated by unscrupulous chemical, metal

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1 finishing, smelting, and pharmaceutical industries.

2 We stand before you to put the handle-with-care label
3 back on our communities.

4 By closing loopholes -- by closing loopholes
5 that allow 32 industries to essentially pollute at
6 will with impunity and tacit government approval, EPA
7 can stop our communities from becoming tomorrow's
8 toxic waste dumps, but only by eliminating tolling
9 exemptions that weaken the rule.

10 While administrations change, lead, mercury,
11 cadmium, and arsenic are forever. While we can --
12 while we can stop tomorrow's tragedies, this day comes
13 too late for some right here in Chicago. Less than
14 five miles from this hearing, in the Pilsen community,
15 H. Kramer and similar businesses have rained down lead
16 into the soil until Illinois EPA's testing revealed
17 residential lead levels of twice the legal limit.
18 More than six years have passed since H. Kramer agreed
19 to right this wrong, but the community still waits as
20 more and more children suffer from disabilities due to
21 elevated lead levels.

22 In 2007, the Illinois EPA investigations
23 unearthed ground water contamination at the Flexible
24 Products site in Crest Hill. Arsenic and lead levels

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1 of nearly nine times and 400 times their respective
2 legal limits were found only 2300 feet from the
3 community's drinking supply, and that story of
4 contamination continues to unfold.

5 We come to this hearing too late to avoid the
6 tragedies like the ones in Pilsen and Crest Hill, but
7 not too late to prevent this kind of tragedy in the
8 future. Today, we call on EPA to end the free ride
9 for so-called recyclers that have led a race to the
10 bottom in the industry at the expense of public health
11 and the environment. After major failures in
12 promulgating an ozone rule and coal combustion waste
13 rule, we remain cautiously optimistic that EPA can get
14 back to the business of putting public health over
15 electoral politics and polluter profits. Thank you.

16 MS. GELDARD: Thank you. Our next speaker is
17 Edyta Sitko. I apologize if I pronounced that wrong,
18 or maybe you're not here to hear me. Okay. All
19 right.

20 Our next speaker is Jesse Marquez.

21 MR. MARQUEZ: Good morning. My name is Jesse
22 Marquez. I am the Founder and Executive Director of
23 the Coalition for a Safe Environment. My name is
24 spelled J-e-s-s-e, middle initial "N" as in Nicholas,

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1 last name Marquez, M-a-r-q-u-e-z. I'm speaking both
2 as the founder and executive director of the Coalition
3 for a Safe Environment and as an individual resident.
4 I have traveled from Los Angeles to come here
5 overnight to participate in this after speaking in San
6 Diego, and then from there had to have my son, instead
7 of coming back to LA, rush me to the San Diego Airport
8 because it was -- to save time to get me here in time
9 to be able to participate.

10 I live in Wilmington. Wilmington is one of
11 30 communities in the City of LA. The community I
12 live in is a HAZMAT nightmare. The largest container
13 port in the United States, the Port of Los Angeles, is
14 in Wilmington. The second largest container port in
15 the United States, the Port of Long Beach, borders
16 Wilmington. There are three major oil refineries in
17 Wilmington. There is a fourth major oil refinery that
18 borders Wilmington. For every oil refinery, there is
19 also a separate asphalt facility. For every asphalt
20 facility, there's also a sulfur recovery facility, and
21 it goes on and on and on. Wilmington was also the
22 Wilmington Oil Field, the largest oil well field in
23 the United States. It is now about 95 percent empty,
24 but the whole harbor community was an oil well

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1 community.

2 I'm here to speak on various issues. These
3 are things that are happening regularly in my
4 community. We are an environmental justice community.
5 We are about 85 percent Latino, 50 percent
6 Spanish-speaking, and we have many other ethnics there
7 that I live with and share my daily life with. I've
8 also been personally impacted by this. In various
9 events that do occur, these are typically disasters,
10 tragedies, fires, explosions where I am sick. I am
11 sick for more than one day. Sometimes it might take
12 weeks to recover because of the things that I have to
13 breathe during the course of those things.

14 I'll be speaking basically on three subject
15 areas: Scrap metal recycling, specifically at the
16 Port of Los Angeles; junkyards. Wilmington is home to
17 50-plus acre auto recycling parts junkyards; and then
18 at the ports and nearby, because of the freeway and
19 growth of the goods movement, we also have dredged and
20 excavated materials.

21 Things that we're concerned with with the
22 regulation and the past regulation is that hazardous
23 materials are not adequately regulated. Our history
24 has shown that facilities are not inspected regularly.

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1 Our chemicals are not tested or facilities are not
2 tested for all known hazardous materials on-site.
3 Permits are not adequately reviewed.

4 There are typically no public hearings.
5 Public comments are ignored and are never
6 investigated. In fact, of about 50 public hearings
7 I've been at, I've never been called once by any
8 government regulatory agency, either federal, state,
9 or local, to interview me as to what did I experience
10 or what did I discover, what did I research, what were
11 my findings.

12 There is never a review of government agency
13 investigations, findings, penalties, and fines. New
14 permits are always rubber-stamped by the government
15 agencies. They're never thoroughly reviewed.
16 Residents do not know what types of hazardous
17 materials are on location. Residents are not advised
18 what to do in the event of an emergency. Facilities
19 do not have emergency response and evacuation plans
20 for the public.

21 There is no follow-up investigation or
22 interview of local residents and small businesses that
23 are impacted, including public schools. There's never
24 public disclosure of findings. The only time we hear

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1 about what happened might be a year or two later if
2 there was a penalty or a sanction or fine or a court
3 case filed, but basically other than that, we know
4 nothing about anything.

5 Government regulatory agency inspectors never
6 show up on time to catch the incident. Sometimes
7 things might last 20, 30 minutes, you know, that are
8 going on, or we might call and notify them that
9 something is occurring, and it might take them hours.
10 It might take them a whole day. It might take them
11 days to show up at a location where we've reported
12 something.

13 Another problem we have is that government
14 inspectors show up, and what they do is that depending
15 on the type of thing that's occurring at the time,
16 they never have adequate test equipment. So, for
17 example, HMD might show up with a particulate matter,
18 you know, monitor when there's actually various toxic
19 chemicals being released. So they never have accurate
20 equipment that will actually detect, measure, and
21 identify what are the different chemicals that are in
22 the air at the time or even in the land at the time.

23 Settlements and fines that are negotiated by
24 government agencies never come back to the community.

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1 The communities are impacted. Public health is
2 impacted. Yet not a dime ever goes to our local
3 community local clinic. In the case of Los Angeles
4 County Medical Center, they lost over 100 medical
5 doctors due to financial cuts in the last several
6 years, but, yet, we have to fend for ourselves.

7 We do support the environmental justice
8 analysis and its findings. However, I did notice a
9 couple of things. They used the term their impact
10 risk to minority and low-income communities. We would
11 like to expand that definition to include what is
12 commonly called sensitive receptors. Within that
13 sensitive receptor, we want to make sure they identify
14 pregnant women. Ethnic minority communities also have
15 large senior citizen populations. We have large
16 children populations. We have a higher percentage of
17 no insurance, and then we also have larger social
18 economic impacts. All these categories are not
19 assessed, and so you really have no clue as to how
20 in-depth is the impact to a community.

21 Typically, public notification is 500 feet.
22 500 feet is basically half a block. Well, if there's
23 an explosion and fire at a HAZMAT facility, it does
24 not stay within the boundary of 500 feet. Most

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1 organizations like ours do not live across the street
2 from any of these type of facilities. So
3 organizations that would have some experience, some
4 knowledge, some staff, or some volunteers, we are
5 never notified. And so we're lucky if one of the
6 local residents happens to know us or a neighbor says,
7 Well, hey, let this group know about it. That's
8 typically how we find out.

9 And, yes, you have your public notification
10 requirements. You publicize it in a newspaper, a
11 regional distribution, which is a joke. Because in my
12 community, probably 90 percent of the population does
13 not get the Los Angeles Times, and 90 percent of our
14 population is not going to look for an ad in the
15 classified section as to whether or not there's going
16 to be a public hearing.

17 So you must use all local resources, which
18 means all local newspapers, community newsletters,
19 community organizations that have networks via either
20 their newsletters, their pamphlets, their memberships.
21 Public agencies typically never use free media that's
22 available to them. You put in a classified ad, but
23 then you never contact all the local newspapers to be
24 interviewed. The television stations and reporters

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1 that typically deal with environmental affairs and
2 public health are never asked and notified that, Hey,
3 here's an opportunity where you can interview us or
4 come on-site to the hearing. All this is free media.
5 The radio stations are all local, again, are never
6 contacted for interviews by the local reporters on
7 various topics, and we highly recommend that.

8 When you do assessments, you never do
9 worst-case scenarios. You will do a typical risk
10 assessment based on normal parameters, but when the
11 public is not involved in what to assess or what to
12 look at, it's omitted. I'll be going into the
13 articles in a minute.

14 There's also not a one-stop information
15 source where the public can go to to look at the
16 history of compliance with the company. Typically, we
17 have to go to various websites of different government
18 agencies. I did notice that in your studies that you
19 did that, you know, you found so many companies in
20 this category and that category and that category.
21 But the fact of the matter is that, in my opinion, I
22 think you're only aware of about one-third of what
23 actually happens out there because it's only where
24 you're involved.

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1 If it's California Department of Toxic
2 Substances Control, you don't know what they did
3 because you were not part of that action or that
4 investigation. If our local district attorney gets
5 involved and files a suit, you're also not aware of
6 that because you're not part of that investigation and
7 part of that legal process. So we feel -- we feel
8 that at least 50 percent more you're not even aware
9 of, and, therefore, your documentation and research is
10 not adequate. It is not aware of all the different
11 things that are occurring.

12 Recycling industries and associations, while
13 they did organize to protest against this rulemaking,
14 what they should be organizing against are the
15 industries that are using toxic chemicals on the
16 products that are part of what they're recycling.
17 That's what they should be getting involved with.
18 Also, many of these contaminated hazardous sites have
19 also changed. In the case of Wilmington and Carson
20 and Long Beach and all the harbor south bay area, as I
21 mentioned, it was the largest oil-producing well
22 location in the western United States.

23 In the case of the City of Carson, which
24 borders Wilmington, 285 homes were built on top of a

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1 shell storage tank facility for their petroleum
2 products. It was remediated, and lo and behold, we
3 have discovered 25 years later that vapor emissions
4 have been coming out of there, benzene and other
5 chemicals. That when a resident let their attorneys
6 come in with a bulldozer and dug it up, they found
7 numerous chunks of rock and ground that was
8 contaminated. Yet, it was given the bill of okay by
9 government agencies, when it was not.

10 Also, we are impacted due to the fact that
11 many of our communities also have home gardens. So
12 any time we're growing home vegetables and fruits, the
13 residents are not aware that it's been contaminated.
14 Every time there's a fire and explosion, which happens
15 regularly, then our food is being contaminated. Since
16 I live in the harbor -- many residents go fishing.
17 Fishing is also a food supply for many of our harbor
18 residents, but then we have contamination of the land.

19 I passed out newspaper articles to you. One
20 of them was formally known as Neu-Proler, which was a
21 scrap metal facility at the Port of Los Angeles. In
22 1991, it was fined because of the PCBs. When they
23 crush metal, crushed metal also causes powder, dust.
24 Particulate matter goes in the air and lands in the

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1 ocean. That same facility, it was purchased about
2 five, six years ago by another company. Did anything
3 change? No. They were just found guilty by our LA
4 district attorney and our Department of Toxic
5 Substances Control for the State of California. In
6 the last five years, which was not documented, was the
7 fact that they had two major fires. Those fires did
8 not stay there. They went into our community.

9 You also see an ad for the Pick Your Part
10 Junkyard which just occurred last year. We had
11 problems there. Why? Because they never thought that
12 there would ever be a fire at a junkyard. And what
13 happened? Fire trucks arrived. They could not get
14 into that 50-acre plus facility because there was no
15 road access. Not only that, they could not hook up to
16 a fire hydrant because there were no fire hydrants
17 there. As a result, it burned for 32 hours. I was
18 sick for two days and bedridden for another two, three
19 weeks because of the impact to my lungs, and the rest
20 of my community. We will be submitting more written
21 comments in the future. Thank you.

22 MS. GELDARD: Thank you. Our next speaker is
23 Jane Williams.

24 MS. WILLIAMS: Good morning. I'm Jane

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1 Williams, California Communities Against Toxics. It
2 is still early for us because Jesse and I took the Red
3 Eye. So I was sitting there while Jesse was giving
4 his testimony, and, of course, I'm surprised he didn't
5 tell you some of the other -- the other great stories
6 about the SA Recycling facility where we finally got,
7 after 12 years, the local -- not the local, the state
8 enforcement agency to actually put air-monitoring
9 equipment across from the facility. So there's a
10 great story about Jesse being up on the rooftop of --
11 what was that?

12 MR. MARQUEZ: It was actually a community
13 mission.

14 MS. WILLIAMS: It was a mission. So the
15 facility was in noncompliance for almost 15 years
16 spewing toxic dust and PCBs and all kinds of other
17 stuff, not only into the bay, but into the surrounding
18 community. And now, it's a \$2.9 million fine, and
19 they are supposed to be not operating unless their
20 equipment that controls their pollution is actually
21 on-line, because they got fined for their air
22 pollution control equipment burning to the ground, and
23 they still operated for months without it operating.
24 So I think one of the things that's missing from this

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1 conversation on hazardous waste is what the -- what
2 the conditions are on the ground. Okay.

3 And we're here from California, which has the
4 reputation of having, you know, this great regulatory
5 scheme. We regulate more chemicals under our state
6 RCRA program. We have more stringent secondary
7 containment laws. We have, you know, better
8 reporting. We have Prop 65, which forces you to -- or
9 at least sort of forces you to tell people around you
10 what's going on. But I sat there, and I went through
11 -- I started at the top of the state and went down to
12 -- I got to San Diego, and I could tell you a story of
13 at least 15, 20 minutes on 12 sites that's equally as
14 interesting as the story that Jesse has -- had going
15 on with SA Recycling.

16 But what I thought I might start out with,
17 since I don't have a lengthy amount of time is, I grew
18 up with this -- with this character in our community.
19 Her name was Shirley, Shirley White, and she was
20 already an older woman when I first met her, and she
21 had four kids and her kids were very similar in age to
22 my brother's and I. And she was a very heavyset
23 woman, but she loved horses, and so one of the things
24 that she really liked to do is -- she had this little

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1 pony named "Snipper." And she got a cart for it so
2 that the pony would pull the cart, and she would go
3 all over the community with this little pony cart.

4 Right. I know you're wondering why I'm
5 telling you this story. Well, it happens to be that
6 she lived about two miles from a -- from a notorious
7 site in California called Mobile Smelting. And this
8 is where they brought all kinds of interesting things
9 from Jesse's community, at the port largely, and they
10 brought it up to this guy who had a couple-acre site,
11 and he smelted things.

12 One of the things that he did to recover
13 copper wire was he took these carts, and he would put
14 the wire on the cart, and then he would take PCB
15 transformer fluid, and he would put it on the cart
16 full of the wire and he would stick them in his
17 furnace. So you can imagine now that we basically had
18 a dioxin production unit going on there. Right.
19 Massive amounts of dioxin, and he did have a stack.
20 He did have a permit from the local air pollution
21 control district, but, you know, obviously, some of
22 his activity was illegal since we're not supposed to
23 be burning PCBs in little carts like this post RCRA.

24 But I just want to say this, to underscore,

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1 that this facility operated in the '80s post RCRA. It
2 is a huge state Superfund site now. The taxpayers of
3 California have already spent about \$10 million. Now,
4 we're going to spend like another \$6 million. Okay.
5 It's been over a twenty-year long struggle to first
6 get the site sort of cleaned up, and then it was a
7 struggle not to get it cleaned up because they wanted
8 to take the dioxin-contaminated ash, which is actually
9 one of the largest stockpiles of dioxin now in the
10 United States, and burn it, which would release huge
11 amounts of dioxin.

12 So the reason I'm telling you this story is
13 because it's -- it's what's going on in the ground
14 that highlights where the holes are in RCRA. Where,
15 despite having really good citizen enforcement
16 supervisions, despite USEPA doling out millions of
17 dollars to states every year for enforcement, and
18 despite, you know, fairly good law and case law on,
19 you know, stopping releases, it's not working on the
20 ground.

21 Mobile Smelting right now is still there. It
22 has this dilapidated -- I should have brought a
23 picture. It's got this dilapidated old fence, you
24 know. It's got, you know, this -- this rusted sign

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1 that says, "Caution, Hazardous Waste Materials." The
2 dioxin-contaminated ash is inside a cargo container.
3 The state has to go out there at least two times a
4 year and, you know, put the locks back on it because
5 people break into the cargo container, and we've been
6 saying to the state for a long time, Just bury the
7 cargo containers. Bury the stuff on-site. Because
8 there is no technology that's been created, really, to
9 destroy dioxin safely, and there's literally pounds of
10 dioxin in this contaminated ash.

11 Now, what happened to Shirley? She had
12 chickens. She ate chicken eggs every day laced with
13 dioxin. She died of breast cancer. The state came in
14 and told us that they did not have the authority to --
15 even after they had tested the eggs and found huge
16 levels of dioxin in the eggs, the state did not
17 actually have the authority to tell the people to stop
18 raising chickens and to stop raising chickens
19 commercially and to stop the sale of the eggs.

20 So I point this out to you because this is
21 just one site, one story. I could go into the Rimco
22 site. I could go into Pimeco. I could go into Bobo's
23 Junkyard, one of my favorite names, at Hunters Point
24 where we've -- you know, we've got National Cement

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1 where they were burning hazardous waste, and they
2 burned hazardous waste.

3 Talk about the notification requirements. My
4 mom used to carry around this laminated piece of
5 paper. It was about the size of two postage stamps.
6 About this big and this big (indicating). On page 82
7 of the Bakersfield California, which is a newspaper,
8 that is like a hundred miles from where we live, which
9 was a tiny little notice telling us that National
10 Cement was going to start burning supplemental fuels,
11 and we all know what that was, right? That's where
12 they started burning hazardous waste.

13 So if people knew what was going on in their
14 communities and the information was more readily
15 available, okay -- and that's one of the flaws I see
16 with this rule. Even the fact that you've
17 strengthened it -- people still are not going to know
18 what kinds of activities are taking place in their
19 communities. And, ladies, when I say in your
20 community, you need to think in the schoolyard.
21 Because I can cite a number of instances in California
22 right now where the facilities that are governed by
23 this rule operate contiguous to schoolyards.

24 Jesse, what's the name of that facility that

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1 Shabaka (phonetic) worked on in Compton? Right next
2 to the high school.

3 MR. MARQUEZ: Falcon?

4 MS. WILLIAMS: No, not Falcon. That's --
5 that's not a hazardous waste site. There's a --
6 there's a junkyard, okay, and it's -- it's -- it is
7 only separated by a chain link fence from one of the
8 high schools in Compton. All right. And about once
9 every three to four years, it blows up, and there is
10 shrapnel that heads into the schoolyard, and they have
11 to evacuate the school for the day. Okay. This is a
12 scrap recycler, a guy who is basically crushing,
13 grinding, and doing all these kinds of stuff next --
14 contiguous to the schoolyard.

15 So when you think about the rules that need
16 to protect communities from these types of activities
17 that are being covered in this particular rule, you
18 need to think about these activities actually taking
19 place in a schoolyard. The SCS facility that was also
20 in Shabaka's community, which is called Athens Park --
21 they renamed it. It used to be called Watts. This
22 facility was a vacant lot, and it literally was a
23 chain link fence -- they put a chain link fence around
24 it and turned it into a transfer station. Okay. The

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1 trucks had to cross the median. I mean, bump over the
2 median to get into the lot, and so when there were
3 releases at this facility, literally, the neighbors
4 just had a fence, just like a wall, a fence, between
5 it and them.

6 So, I mean, there was a long community
7 struggle there to close that facility down. There was
8 all kinds of releases. It was -- you know, it wasn't
9 an interim status facility. You know, we tried to get
10 its permits pulled. Many, you know, community
11 protests, and, you know, the guy who owned it said,
12 You know, you can't take away my livelihood by
13 regulating hazardous waste. So, you know, this is --
14 you know, the neighborhood surrounding this is a 98
15 percent African-American community, and it was, I
16 think, a six-year long battle to close the SCS
17 facility down. All right. And that's just a transfer
18 station, just a transfer station.

19 At Union Carbide, which is actually in the
20 community that I live in -- the community that I live
21 in is one of the most notorious hazardous waste
22 dumping grounds in the state. It's right over the
23 county line from Los Angeles. We have 23 toxic sites,
24 all of which were doing some sort of recycling with

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1 respect to speculative accumulation. We have the
2 state's worst childhood cancer cluster. We had 11
3 kids in three years contract brain cancer in a town of
4 about 1600 people.

5 The interesting thing is that to this date,
6 after all the attention has been brought to the town I
7 live in, Union Carbide, which has a facility there,
8 still has the polynuclear aromatic hydrocarbons, the
9 waste which contain very large amounts of this, under
10 speculative accumulation. So they have been
11 quote-unquote, speculatively -- non-speculatively
12 accumulating this waste which was created before the
13 plant was shut down. The plant was shut down when I
14 was about ten, and I'm over 50 now. The waste still
15 sits in there. It blows around in the community, and
16 people say from Union Carbide, No, we're still using
17 that. We still go in there, and they must take like a
18 shovel-full every couple of years and sell it for
19 something. Right. So it's still there.

20 So I'm telling you these stories, and I can
21 just keep going on and on and on about stories in
22 California, which has a very much better regulatory
23 structure than the rest of the nation, okay, to sort
24 of give you an idea of what it's like on the ground.

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1 What it's like on the ground is not what it's like in
2 the regulation. The only way that we sort have been
3 able to create a counterbalance to some of these
4 forces in communities is to have a special
5 environmental justice enforcement initiative, either
6 at the state level, at the local level, or at the
7 regional level with our different regulatory agencies
8 so that we get all of the agencies, the district
9 attorneys, the CUPAS, the local enforcement, first
10 responders, everybody focusing on a certain area where
11 a lot of this activity is taking place. It's the only
12 way that we can get sort of a counterbalance to the
13 forces that are on the ground that are continually
14 polluting communities.

15 So thank you for allowing me to testify. I
16 hope some of these stories are helpful, and I would
17 certainly put it out there that we often give tours in
18 Los Angeles of hazardous waste sites. In fact, we're
19 getting ready to do a tour for the new Cal/EPA
20 secretary, I believe, in the next six weeks or two
21 months, and I think it would be a really good idea
22 maybe if somebody from DC came out to see some of the
23 sites that we look at very often. All right. Thank
24 you.

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1 MS. GELDARD: Thank you. Our next speaker is
2 Jared Policicchio.

3 MR. POLICICCHIO: My name is Jared
4 Policicchio. I am an attorney at the Environmental
5 Law & Policy Center. My name is spelled J-a-r-e-d,
6 P-o-l-i-c-i-c-c-h-i-o. Thank you for the opportunity
7 to speak this morning. As I said, I'm an attorney at
8 the Environmental Law & Policy Center located here in
9 Chicago. I'm here to provide ELPC's comments
10 concerning the proposed rule amending the definition
11 of hazardous solid waste in RCRA. I will provide
12 written comments after this session.

13 ELPC believes firmly that environmental
14 protection can occur hand in hand with economic
15 development. This is one of our guiding principles
16 and it forms the work we take on and the policies we
17 decide to support. For this reason, we oppose the
18 2008 rulemaking creating an exemption for hazardous
19 secondary materials from the definition of hazardous
20 waste in RCRA. For this same reason, our goal of both
21 environmental and economic improvement, we are
22 generally supportive of the proposed rule amending
23 that 2008 action.

24 Sticking with my initial principle of

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1 environmental protection in tandem with economic
2 development, the 2008 Rule weakened regulation of
3 environmental and health dangers from hazardous waste
4 recycling operations that are disproportionately
5 located in low-income and minority communities. On
6 the flip side, EPA's own analysis of the rule's impact
7 showed only a meager increase in the rate of recycling
8 due to the new hazardous waste exemption.

9 We cannot support a policy of weakened
10 environmental protection in exchange for minor
11 economic benefits. By contrast, the proposed rule
12 offers a legal mechanism for the ability to oversee
13 dangerous hazardous waste operations. In the Chicago
14 area alone, if the proposed rule is enacted and
15 properly enforced, low-income communities will see
16 immediate health and safety benefits. As a previous
17 commenter talked about, just one example is the Pilsen
18 neighborhood on the west side where there are numerous
19 industrial operations where hazardous waste recycling
20 is currently not subject to RCRA regulation, but would
21 be under the proposed rule.

22 The proposed rule is not designed to stop
23 these businesses from operating, rather, they're
24 designed to make sure they keep local authorities

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1 informed, properly store hazardous materials, and
2 demonstrate the legitimacy of recycling activities.
3 Let me be clear. The ELPC is not opposed to
4 responsibly operated hazardous waste recyclers. In
5 fact, legitimate reuse of materials otherwise headed
6 for disposal should always be encouraged if done
7 properly. But given the EPA's own empirical evidence
8 showing that such facilities have an outsized impact
9 on already vulnerable populations, it is imperative
10 that regulations weed out the responsible operators
11 from those who are not. As both a legal and policy
12 matter, just because a waste product is not ultimately
13 headed for discard, this is not sufficient for
14 abandoning the legal tool that RCRA offers to protect
15 communities from the health and safety dangers of
16 hazardous waste.

17 Finally, while ELPC urges EPA to promptly
18 promulgate a final rule in this matter generally in
19 line with the proposed rule, we join with our
20 colleagues at Earthjustice and the Sierra Club to push
21 for certain changes that we believe can and must still
22 be made prior to final publication. Specifically,
23 we'd like to echo three particular improvements we
24 think can be made. We urge EPA to strengthen the

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1 definition of containment so that it reaches hazardous
2 waste held by generators during the storage and
3 recycling process.

4 Second, we believe the definition of release
5 in the rule can also be strengthened and clarified to
6 include escaped chemicals during the hazardous waste
7 recycling process. And, finally, we also echo the
8 sentiment of removing the tolling contractor's
9 exemption, given that it is another loophole that
10 allows hazardous waste transfers without regulatory
11 protections. We believe all three of these changes
12 will enhance environmental protection of vulnerable
13 populations, but also benefit responsible hazardous
14 waste generators and recyclers by giving them
15 regulatory certainty and a clear understanding of
16 their obligations.

17 Thank you for your time, and we look forward
18 to submitting written comments after the session.

19 MS. GELDARD: Thank you. Is Edyta Sitko
20 here? Okay.

21 At this time, we've gone through everyone who
22 has preregistered or registered at our outside desk to
23 speak, but is there anyone that we missed? Is there
24 anyone who would like to make further comments, if we

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1 cut you off? Yes? Mr. Marquez.

2 MR. MARQUEZ: Jesse Marquez, Coalition for a
3 Safe Environment. In one of the newspaper articles I
4 passed out to you dealt with a junkyard fire. What
5 you have to realize is what is at an auto recycling
6 junkyard. Well, you have metal parts that have been
7 painted and that have been coated. You have engines
8 with oil. You have brake fluid, transmission fluid,
9 power steering fluid. You have plastic parts. You
10 have leather. You have vinyl interiors. So when the
11 explosion happened there, and the fire occurred there,
12 those were all burning, and that was choking our
13 community there. All of that could have been
14 prevented. So you know what caused it actually are --

15 HMD is also incriminated in the issue also.
16 Because they had you turn in your old gasoline lawn
17 mower for a new electric lawn mower. So what happened
18 is that they delivered the old gasoline lawn mowers to
19 this junkyard, and one of the procedures is that
20 they're supposed to empty out the gasoline in the gas
21 tank. Well, somewhere, one of the drivers in the
22 forklift was picking up this, punctured it, and that's
23 what ignited everything.

24 So you have to realize there's also these

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1 barrels where they pour in the oils of different
2 types, the gasolines, the diesel fuels. All those
3 were blowing up at the same time. In fact, when it
4 blew up, you could hear the explosion three miles
5 away. That's how powerful it was. You also have to
6 realize that junkyards, in this particular case, are
7 built on top of a Superfund fund site. Over years and
8 years of its operation, the ground is saturated, deep,
9 deep, with all the oozing stuff that comes out of
10 these auto parts.

11 In the case of the Port of LA, we have
12 SR Recycling and its prior owner, Neu-Proler. We have
13 various metal parts coming to it. So not only is it
14 just auto parts that are junk, there are metal barrels
15 of it coming into it. So we're talking about PCBs.
16 You wonder, well, how does that get into a scrap metal
17 yard? Well, when you have metal barrels of it, it's
18 on it. And so any metal container has various types
19 of toxic substances on it, and when it gets crushed,
20 it gets all crushed together.

21 So there's never an accurate inventory of
22 what are all the different types of toxic chemicals
23 and materials that are at all these facilities. When
24 we're talking about the Port of LA or any port in the

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1 United States, they do dredging regularly for two
2 purposes. They're building a new terminal out in the
3 ocean. So they need to dredge materials. They also
4 need to dig them deeper on a regular basis so as --
5 from inland the waters come in, sediment comes in and
6 fills it up. What also happened in Los Angeles was
7 that there were various chemical companies, Monsanto
8 and many others, Firestone Tire & Manufacturing, where
9 back in the day, they dumped into our normal water
10 channels that went basically into the sewer system and
11 ended up into the ocean. Well, all the ocean areas
12 where the outfall pipes went into, where all the sewer
13 water went into, you know, are all contaminated.
14 There's been no effort to remove it. It is still
15 there.

16 One of the brilliant ideas of EPA was to at
17 White Point in San Pedro was to pour 10 feet of sand
18 on top of the PCBs and other toxic chemicals. They
19 came back two years ago and did another testing.
20 Well, you couldn't stop the ocean waves from moving
21 it, and their idea was just pour more sand on top of
22 it. Could it be removed? Yes. Would some of it then
23 float into the water and contaminate it even more?
24 Yes.

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1 But then we had an idea and solution. Build
2 a plastic dome-type thing. It could be 10 feet by 10
3 feet, 25 by 25, with a vacuum up on top, and then
4 section by section on the ocean floor suck it up. We
5 even ran it by a few scientists as to the feasibility
6 of it. Yeah, we can lower a dome onto the ground,
7 and, yes, you can have a vacuum container with a hose
8 coming up and bring it to the top, to the top of the
9 barge. But they chose not to even explore that idea.
10 In fact, some of them laughed at the idea.

11 So communities also have solutions. In terms
12 of the port-dredged materials, they just chose an area
13 saying, here's where we're going to dump it. So the
14 area they chose to dump it happened over 25 years of
15 putting contaminants in the soil. So now you had, you
16 know, a couple hundred tons of it sitting. And what
17 happens to be next door to that storage location are
18 seven boat marinas where the public boat and recreate
19 there and thousands of people live on the boats there,
20 but yet that's where it was.

21 We had looked at that area and said we would
22 like to use that as a wetlands restoration area. Cal
23 Poly students one day came cruising by and saying,
24 Hey, 60-plus acres, that's pretty nice. They spent

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1 the whole semester, got other classes, other
2 disciplines, other professors involved, and came up
3 with a 60-page concept how to restore it back to
4 wetlands. So here we're pushing for that to
5 potentially happen.

6 It's the port's responsibility. They created
7 the contaminated soil there on top of an already prior
8 existing oil well field. But what did they choose?
9 They chose not to spend the money to clean it up.
10 Talked to the boat owners and said, Hey, what we'll do
11 is we'll make a park and we'll cover up some of that
12 stuff with a plastic lining and make the rest grass
13 and trees and stuff like that and beautify it for you.
14 That was their solution to the problem.

15 Another little loophole is that you have
16 HAZMAT clean-up companies, but then you can go to any
17 little penny-saver newspaper and see that there are
18 companies that offer cleaning services to your house.
19 It rains. It floods. They come up there and clean it
20 up. Well, a lot of them are basically unlicensed. We
21 have one that is called Environmental Sciences. One
22 night on a Sunday night at 9:00 p.m., I was called
23 saying that, Hey, this truck drove up and unhitched a
24 little trailer. It had like a little, you know, a

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1 little 10,000 gallon tank -- plastic tank on it. It
2 opened the spigot and allowed it to pour into the
3 gutter right there.

4 So I showed up with a camera. I showed up
5 with a jar. I got a sample. Called up the LA Fire
6 Department. It went to their machine saying, Please,
7 leave a message. No one ever showed up. Okay. I
8 also called the LA County Fire Department. I got a
9 live person. They said, We'll send somebody down
10 there. The person came down there, looked at it, and
11 then they contacted some other agency. Well, the
12 agency showed up the next morning, but by the next
13 morning, the truck and trailer were gone. But we had
14 a sample. We had photos. We got license plates. We
15 got other little numbers that were on the thing, and
16 they were found guilty of discharging toxic chemicals.
17 But that type of thing happens regularly in our
18 community where we'll see mysterious vehicles and
19 trucks pull up and start dumping things into empty
20 lots in between the communities.

21 Another big problem we have is since we were
22 a big oil well field, practically every ten blocks
23 you're going to find abandoned oil wells. And
24 wherever there's abandoned oil wells, all the ground

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1 is contaminated. Because they've also been abandoned,
2 there's oil wells, there's oil tanks, and there's
3 pipes. Every year something breaks in Wilmington.
4 Between houses. Between the schools and houses. In
5 fact, right in the middle of the street it happens.

6 One time, some neighbors adjacent to the BNSF
7 Railroad in Wilmington, the Watson Railroad Yard, saw
8 trucks coming up and dumping dirt in the railroad
9 site. There was no big deal. The pile kept on
10 getting bigger and bigger. It happened over a week.
11 The only time they panicked when all of a sudden
12 there's men dressed up in blue HAZMAT suits. That's
13 when they said, uh-oh, that looks scary, and they
14 notified the organization. We went down there and
15 found out that -- and further investigation found out
16 that every agency violated a law. It was part of the
17 Alameda corridor, contaminated soil, and they wanted
18 to get it out of there and needed a place to store it.

19 So they had an agreement with the City of LA.
20 City of LA has procedures where, you know, there has
21 to be a public notice that it's going to be
22 transported and the location it's going to go to.
23 Well, they had a gentleman's agreement, MOU, that
24 said, It's okay. The BNSF Rail said it's okay to use

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1 our yard, and there it showed up, blowing into the
2 people's yards on the other side of that chain link
3 fence.

4 So when you're doing these types of hearings
5 besides a hearing as part of this rulemaking process,
6 you should visit communities known to have problems.
7 So that when you have a hearing, we can come and tell
8 you the local stories how we in our own communities
9 are impacted by various types of things like this. So
10 that as you prepare your rulemaking knowing the
11 stories and the circumstances, you're able to better
12 prepare the rules, regulations, and the requirements.

13 Another thing regarding that Terminal Island,
14 because our Department of Toxic Substances Control in
15 the State of California adopted a new EJ program last
16 year; in their new EJ program, they felt that, you
17 know, if they did get involved in a future settlement
18 or fine of some kind, that the community should be
19 able to benefit from some of that fined money. I'm
20 happy to say that because of our participation in
21 supporting them, we are now the first community
22 organization in the State of California to receive
23 \$75,000 from some of that fined money. So again, that
24 will go towards part of our community education about

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1 public exposure to the types of facilities in our
2 community and also for potential fence line air
3 monitoring equipment that we'll be using in our
4 community. But here a state program has adopted
5 something that we have supported, and now we're the
6 first benefactor of that. We would highly recommend
7 it for others as well.

8 Another thing you're going to see in the
9 handout I passed out to you, there was a local train
10 leaving the Port of LA in the harbor area. The public
11 noticed as the train was going by, because they live
12 on the other side of the fence, you know, 25 feet
13 away, saw liquid pouring out of one of the chemical
14 tanks. So you can see where the fire department
15 closed up the streets alongside it, and sure enough,
16 it was a chemical that's used at refineries and other
17 facilities that was, in fact, leaking.

18 Well, this happens all the time. It happens
19 through all railroad tracks, wherever there are
20 railroad yards, where there has been this
21 contamination occurring. Many times there's also
22 powder. So we can see the powder leaking out of the
23 bottom of it, and naturally on windy days, you see it
24 blowing all along the track as the train's going by.

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1 In the case of the Port of LA, trains are practically
2 every hour on the hour.

3 So, again, I thank you for this time.

4 MS. GELDARD: Thank you. Yes.

5 MS. TUCK: Hello. My name is Lisa Tuck,
6 L-i-s-a. Last name, T-u-c-k. I did not sign up to
7 speak. I work for PSC. We're a waste services
8 company. I've got 23 years in the environmental
9 business. I grew up in the environmental business in
10 the organic and inorganic chemical industry. I'm a
11 complete vegetarian because I don't want to kill
12 anything. I am a conservationist, and I work for
13 industry because I think industry needs people like
14 me.

15 I've listened to the testimony so far, and my
16 take on it is that what we really need is balance. I
17 like rayon. I like synthetic rubber. I like
18 automobiles, and in order to have these things, we
19 have to have industry. In order to have industry,
20 we've got to be able to operate. From my point of
21 view, illegal dumping is a problem, and it has nothing
22 to do with proper recycling. It's a completely
23 different issue. That's illegal. It's against the
24 law, and it doesn't really have anything to do with

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1 proper recycling.

2 The same thing with improperly maintained
3 pipes and improperly sited facilities. It doesn't
4 follow that just because those things are happening
5 that we shouldn't have recycling at all and that those
6 two go hand in hand. So what -- I would just like to
7 ask y'all that if you're going to limit waste or
8 materials or whatever that can be recycled, base it on
9 science and base it on proper and achievable controls.
10 If you're going to expand things that can be recycled,
11 base it on science and base it on proper and
12 achievable controls.

13 That's it. Thanks.

14 MS. GELDARD: Thank you. Would anyone else
15 like to speak?

16 MS. WILLIAMS: I actually don't know if you
17 -- if you will answer any questions at all, but one of
18 the things I wanted to point out is that we have
19 variance procedures in California, and those are not
20 publicly notified. So you can request a variance from
21 our Department of Toxic Substances Control for various
22 different things, you know, a variance for a waste or
23 a use or speculative accumulation or -- so it's like a
24 petitioning process, and the public doesn't know about

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1 that. There's no, you know, database of variance
2 requests. The petitions are not -- there's no
3 clearinghouse, and so a facility can ask for a
4 variance and be -- and go through a process to get a
5 variance and be granted a variance, and someone who's
6 living in the community that's affected by the
7 facility would never know that occurred.

8 So I think -- because I saw in here that you
9 guys were considering giving variances, I think it's
10 really, really important to create some sort of
11 notification procedures so that folks that are going
12 to be affected by those variances actually get
13 notified of them, if at all possible.

14 To add another topic, too, is that facilities
15 that are going to elect to be, you know, covered by
16 these new rules, you know, some facilities will say,
17 you know, I'm not going to take anything that's not
18 manifested. Right? Some facilities will say, I will
19 take secondary materials. Some facilities will say,
20 No, I'm a junkyard and I'm doing what I'm doing.
21 Basically, you're going to have different variations
22 of the theme, but I think that communities should know
23 what's there, even from the point of view of secondary
24 responders. When there's fires, there's earthquakes,

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1 there's storms, there's releases, if first responders
2 don't have an idea of what is on the facility, they
3 don't know what kind of equipment to bring and they
4 don't know what kind of equipment to wear. They don't
5 know what they're really coping with.

6 In the case of Jesse's scrap yard, the
7 facility had parked all of its equipment in a way in
8 which the fire trucks could not even get in to put the
9 fire out. They actually had to go around on the
10 outside of the facility to try to get the fire out
11 with these huge water cannons. So, you know, there's
12 -- there's issues of local planners not even knowing
13 what's going on in some of these facilities and not
14 mandating, yeah, you got to be, you know, by a fire
15 hydrant. Yeah, you know, you need to stack your stuff
16 far enough apart so a fire truck can get into your
17 facility if there was a fire.

18 So I just -- so I just challenge you as
19 you're making changes to the rules to truly think
20 about, again, my theme, which is, how does this
21 actually work on the ground? How does it actually
22 work on the ground? And, you know, if you're not
23 sure, call up the states. Call up folks, you know.
24 In California, we've got local agencies that do

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1 enforcement of hazardous waste laws.

2 Some of these facilities do a good -- some of
3 these local agencies do a great job. Some of these
4 local agencies do a terrible job. So you also have to
5 think about variable enforcement of these laws and
6 these regulations. Some -- some agencies in some
7 states will do a great job. Some agencies in some
8 states will do a terrible job, and all the communities
9 that are affected by hazardous waste recycling or
10 secondary material recycling or co-product or
11 byproduct use, whatever it is, the material still is
12 hazardous when it's released. And so making it
13 count -- taking into account that there's variable
14 enforcement on the ground of whatever regulations you
15 put in place is very important. Thank you.

16 MS. GELDARD: Thank you. Lisa Evans?

17 MS. EVANS: Thank you for the second chance
18 to address you. What I wanted to -- the point I
19 wanted to make is I think it's really important to
20 think about communication and the language that we use
21 to talk about this issue. I sincerely appreciate --
22 and I think there's been a big effort on the part of
23 EPA to outreach to -- to do outreach to the various
24 communities through public meetings starting in 2009,

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1 to the two webinars, your website, the two public
2 meetings we had this week. But I think there's a
3 barrier here with this rule, and I find that in
4 general whenever we're talking about RCRA is that
5 people immediately -- you know, it's a very difficult
6 discussion unless we simplify the language. Everybody
7 knows what Superfund is. Really, everybody should
8 know what RCRA is because it's more important.

9 So, again, if people know we're talking about
10 the prevention of the release of hazardous substances,
11 they will -- their communities will be interested.
12 You know, they know that, but, you know, this rule has
13 an unfortunate title that's hard to, you know -- I
14 guess you guys know the definition of solid waste.
15 You know, is that a shoe store? What is that? So,
16 you know, but it's -- it really can be put in language
17 that will -- will justify and emphasize the importance
18 of the rule.

19 What I see happening over the next, you know,
20 few months, you know, ahead as you guys go to finalize
21 the rule, there's going to be huge rhetoric. You
22 know, the talking points of people who don't want to
23 see EPA exist anymore. They're going to talk about
24 senseless regulations, about harming the economy,

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1 about harming jobs. If people don't understand what
2 this rule means, they might put this in the category
3 of overregulation or needless regulation in a
4 burdening industry. If people understood that what
5 you're talking about is notifying communities,
6 notifying first responders of what is on-site of the
7 requirement to contain that waste, the dangerous
8 waste. I don't think you're going to get effective
9 pushback because I think, you know, bipartisan support
10 will be there, you know, to a reasonable extent, for
11 these kind of baseline protections.

12 So I would urge you to think about that, you
13 know, at the same time, the environmental community
14 has to think about that because, you know, we want to
15 be effective in our outreach as well. I do want to
16 second one thing that Jesse said, which is -- or I'm
17 sorry, it might have been Jane or a combination of
18 both -- concerning the evaluation of the facilities on
19 whether in your damage case analysis, which includes I
20 believe right now it's 223 sites -- I know that there
21 was another list of hundreds of sites which for one
22 reason or another were not investigated. There is --
23 you know, you already have over 200 sites, and I don't
24 know how much in millions or maybe billions of dollars

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1 that includes the cleanup costs. But I do think there
2 are many, many more sites out there that you could
3 examine on that list of 300-plus sites, and also
4 possibly through outreach to the community for more
5 sites.

6 One thing, again, which would help both in
7 gathering evidence and also in your understanding of
8 the issue and also in the community's understanding of
9 the issue is to participate in the kind of tour that
10 Jane was talking about, you know, in the LA area, the
11 Chicago area, the New York area, you know, where EPA
12 has regional offices where it would be relatively easy
13 to set up, and I think very educational for both state
14 and federal regulators, community activists, the whole
15 bunch. I would urge you to follow up on that.

16 Lastly, I did want to follow up again on
17 Jane's last comment on controls being enforceable. I
18 touched on that a little bit in my first comments
19 talking about containment, and, I guess, this also
20 harkens back to my experience working for EPA and
21 actually going on an inspection with the regional
22 inspector, is that if the inspector -- you know, they
23 have a checklist, and while -- what you are requiring
24 for containment, it sounds good on the page in terms

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1 of requiring that you contain the material in a way it
2 doesn't -- that prevents releases, it is definitely
3 not the same as saying it has to be in a certain kind
4 of tank or it has to be on, you know, a pad which
5 looks a certain way or it has to be a double-walled
6 container, you know, et cetera, et cetera. You know,
7 these are very detailed regulations.

8 I know industry doesn't like that, but
9 without those kind of specified standards, it's very
10 difficult for a state or federal inspector who needs
11 to walk through, you know, numerous facilities in a
12 day to figure out whether something is being stored
13 safely. So I think that that has to go into the
14 calculation of what the definition of containment is.

15 I guess that's it. I appreciate the
16 opportunity to come up here a second time.

17 MS. GELDARD: Thank you. Would anyone else
18 like to speak? Okay. What time do we have right now?

19 MS. ATAGI: 11:25.

20 MS. GELDARD: We will adjourn for lunch. So
21 that's a good hour and a half. We'll be back here at
22 1:00 o'clock.

23 (At 11:25 a.m., a luncheon recess was taken.)

24 MS. RUDZINSKI: We will begin the afternoon

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1 session of the DSW Public Meeting. Just to remind
2 everyone of the logistics, we will first call the
3 preregistered speakers to the front. When your name
4 is called, please move to the microphone and state
5 your name and your affiliation and spell your name for
6 the court reporter, who is transcribing our comments
7 for the official record.

8 Once all the preregistered speakers from the
9 session have had a chance to speak, we will call those
10 who have registered on-site to speak. Testimony is
11 limited to ten minutes. We will hold up cards to let
12 you know when time is getting low. When we hold up
13 the yellow card, you have one minute left to speak.
14 When the red card is held up, your time will be up,
15 and you should stop speaking. When you have completed
16 speaking, please return to your seat.

17 We will not be answering questions on the
18 proposal, but from time to time any of us on the
19 meeting panel may ask questions of you to clarify your
20 testimony. If you have a written copy of your
21 testimony, please place it in the box at the
22 registration table. Please remember if you do not get
23 to finish your remarks, your written comments will be
24 entered into the record just as if you had provided

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1 them orally.

2 You may also submit additional written
3 comments anytime during the comment period as
4 explained in the handout available by the registration
5 table. Written comments are due by October 20th, 2011.
6 These written statements will be considered the same
7 as if you had presented them orally. If you would
8 like to testify, but have not registered to do so,
9 please sign up at the registration table. We will
10 also call -- give folks an opportunity to come up
11 after all the registered speakers have spoken.

12 An overview of the 2011 DSW Proposal, which
13 includes instructions on how to submit written
14 comments, can be found at the registration table where
15 you have signed in today. Finally, if you have a cell
16 phone, we would appreciate it if you would turn it off
17 or turn it to vibrate. If you need to use your phone
18 anytime during the meeting, please move to the lobby
19 or somewhere outside the meeting room. We ask for
20 your patience as we proceed. We may need to make some
21 minor adjustments as the day progresses. Thank you
22 for participating today, and let's get started.

23 MS. ATAGI: Is Michael Mitchell available?
24 All right. Timothy Serie?

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1 MR. SERIE: Good afternoon. My name is Tim
2 Serie. That's S-e-r-i-e. First, I just want to say
3 thank you to EPA for giving us this opportunity to
4 comment. I'm pleased to be here today to represent
5 the American Coatings Association or ACA, which is a
6 voluntary nonprofit trade association representing
7 paint coatings, manufacturers, suppliers,
8 distributors, and technical professionals. ACA
9 strongly believes it's possible to strike a balance
10 between the protection of public health and the
11 environment while also still encouraging beneficial
12 recycling and reclamation activities.

13 With this in mind, we believe the new
14 proposal increases regulatory uncertainty and creates
15 significant barriers and risks for those wishing to
16 engage in environmentally beneficial recycling and
17 reclamation activities especially under the
18 generator-controlled exclusion.

19 This afternoon, I'd like to focus my comments
20 upon three key points. First, we believe the new DSW
21 Proposed Rule is inconsistent with the concept of
22 discard under RCRA. Second, the new requirements and
23 conditions on the generator-controlled exclusion are
24 not warranted by the administrative record. And,

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1 third, the Proposed Rule would discourage beneficial
2 reclamation activity and lead to increased off-site
3 treatment and disposal contrary to the underlying
4 goals of RCRA.

5 On the first point, ACA believes that this
6 new DSW Rule departs from the concept of discard and
7 should be revised to conform to this principle. As
8 everyone's aware, EPA's authority under RCRA extends
9 materials that are considered solid waste, and for
10 purposes of the statute, solid waste only includes
11 those materials that have been truly abandoned or
12 discarded. So in looking at this proposed rule, the
13 question should be: Does this requirement help EPA
14 determine whether materials have been discarded for
15 purposes of RCRA or whether this is legitimate
16 recycling?

17 ACA supports the new definition of contained.
18 We think it's clear and enforceable. So if you look
19 at the criteria in this definition, they're all
20 indicative of whether the material in the unit is
21 being treated as a valuable commodity and stored
22 properly or whether, in reality, it's been discarded.
23 So if you have a unit that is in bad condition, has
24 leaks, or is not well-managed, this indicates that the

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1 owner's actually abandoning or discarding the
2 material.

3 But on the other hand, ACA does not support
4 making notification a condition of exclusion and does
5 not support the legitimacy documentation requirements
6 since, in our view, these are not indicative of
7 discard. A facility could meet the contained standard
8 and meet all of the legitimacy requirements
9 demonstrating that they're not discarding material
10 without documenting their legitimacy requirements or
11 notifying EPA.

12 On to the second point, ACA feels that the
13 additional requirements and conditions in the new
14 proposal, especially for the generator-controlled
15 exclusion are unwarranted. The proposed rule fails to
16 demonstrate why the existing DSW regulations are not
17 protective of human health and the environment, and
18 the record also fails to show how the new provisions
19 in the rule would address any increased risks.

20 The EPA relies on a number of studies
21 including the environmental justice analysis and a set
22 of damage cases. When you look at these damage cases,
23 a significant majority of the damage cases involve
24 off-site transfers to non-RCRA permanent facilities.

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1 Therefore, it's not useful or justified to increase
2 regulations for generators under the
3 generator-controlled exclusion and, also, it's not
4 justified to increase regulations for generators that
5 are sending or transferring hazardous secondary
6 materials to RCRA permanent facilities.

7 Instead -- instead of adding unnecessary
8 regulatory burdens that according to the study may
9 provide little or no environmental benefits, this rule
10 should focus on addressing the documented risks
11 associated with recycling and reclamation, which as
12 we've seen from the study, revolve around off-site
13 transfers to non-RCRA permanent facilities.

14 And, lastly, the proposal as written will
15 discourage beneficial reclamation activity, and as a
16 result, facilities will turn to incineration, off-site
17 treatment, and landfill disposal, which will
18 complicate and -- will complicate many of the issues
19 that other commentators spoke about before involving
20 landfills or other recycling facilities.

21 This rule creates new regulatory hurdles,
22 uncertainty, and potential liability for companies
23 wishing to use these exclusions. If the risks are too
24 high -- and by that I mean there's too much potential

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1 liability -- and the burden is too high, it's easier
2 for our members to transfer hazardous secondary
3 materials to third parties for treatment or other
4 forms of disposal.

5 ACA opposes making notification a condition
6 of the exclusion rather than a requirement. The
7 consequences of violating this condition are very
8 serious and a company would face substantial RCRA
9 penalties. I know that in the DSW Webinar, EPA
10 mentioned that there's always enforcement discretion.
11 However, this isn't comforting for a facility that's
12 followed all the rules except they missed a
13 notification, and now they're facing the per-day RCRA
14 penalties.

15 ACA also believes that the fourth legitimacy
16 criteria should not be mandatory and there should be
17 no legitimacy documentation requirement. Concerning
18 the fourth legitimacy criteria in comparison of
19 toxics, it would be extremely expensive and burdensome
20 to test and analyze materials to determine whether
21 there's comparable or lower concentrations of the
22 hazardous constituents.

23 We've spoken to members, and this seems to be
24 a key issue, looking -- looking to whether they would

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1 actually use this exclusion or not. In requiring
2 legitimacy documents at all recycling points is also
3 problematic. A facility will, again, turn to disposal
4 rather than to face uncertainty and potential
5 liability for violating RCRA. ACA also feels strongly
6 that the notification and legitimacy requirements
7 should not be expanded to other existing exclusions
8 under RCRA. All of these new requirements, especially
9 for those under the generator-control exclusion will
10 add regulatory barriers and potential liability
11 leading to increased off-site treatment and disposal
12 in landfills and, ultimately, an increase in the use
13 of virgin materials.

14 In summary, ACA believes that with a balanced
15 approach, EPA has the opportunity to protect human
16 health and the environment and encourage resource
17 recovery, recycling, and reuse. Unfortunately, the
18 current proposal does not accomplish both of these
19 goals. For these reasons, we urge EPA to revise many
20 of the conditions and recordkeeping requirements in
21 the proposed rule and adopt a more balance approach.
22 Thank you.

23 MS. ATAGI: Thank you. The next speaker is
24 John Cain.

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1 MR. CAIN: Good afternoon. My name is John
2 Cain, C-a-i-n. I'm here representing Novesis
3 Environmental Strategies -- that's N-o-v-e-s-i-s --
4 and the South Carolina State Chamber of Commerce. I
5 wanted to talk sort of globally about the proposed
6 rule and the 2008 Rule a little bit, and then I'll be
7 following up with more specific written comments about
8 the specific provisions.

9 The 2008 Rule -- I think it's important to
10 note that the 2008 Rule as published was the result of
11 years of work, and in 2003 was the first time there
12 was a proposed notice, that I remember seeing, to
13 revise the DSW. So the 2008 Rule as it was published
14 had been public noticed, had public participation. A
15 lot of people had done a lot of work on it and spent a
16 lot of time on it. In 2008 -- in October of 2008,
17 that 2008 Rule was published. On January 29 of 2009,
18 the Sierra Club then filed a petition requesting
19 appeal.

20 I think it's important for people to realize
21 that when you have environmental regulations that come
22 out that offer more flexibility, companies aren't
23 allowed to use those until their states, if they're
24 delegated to run under the federal program, have

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1 adopted those regulations. Only a handful of states
2 actually picked up the 2008 DSW Rule, as I recall. I
3 think it was four that actually adopted it, and the
4 reason why would be that, number one, states have to
5 go through their state legislatures in order to get
6 these federal rules turned into their state rules so
7 they can be used there. And many states were
8 unwilling to adopt the 2008 DSW Rule after the Sierra
9 Club had filed the petition. So one question I had
10 is: What about states that did adopt the rule? How
11 about companies in those states?

12 I had seen a presentation put together by
13 EPA, and some things sort of jumped out at me. It
14 said that 32 percent of the facilities who notified
15 that they would be using the exclusions under the 2008
16 Rule either started or increased their recycling.
17 20,000 tons of hazardous secondary material, over
18 50,000 gallons of hazardous waste were all managed and
19 processed without incident. So it would seem that the
20 2008 Rule encouraged resource conservation and
21 recovery.

22 Based on the companies who had the
23 opportunity to utilize the 2008 DSW Rules, you can
24 suppose that even more significant legitimate

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1 recycling and reclamation could have occurred had more
2 had that opportunity. I think it's also important to
3 point out that unscrupulous operators are probably not
4 going to comply with even the existing regulations.
5 We heard a lot of anecdotal stories this morning about
6 one unscrupulous operator after another who was
7 ignoring the existing rules.

8 Increasing regulatory complexity penalizes
9 those companies that would seek to legitimately
10 recycle and reclaim. We're sort of having an
11 assumption here that the proposed 2011 DSW changes
12 presumed that the 2008 DSW Rule was bad. It's
13 conceivable that the 2011 Rules as promulgated will
14 decrease legitimate recycling and reclamation and
15 could increase landfilling of potentially recyclable
16 materials. Increased complexity, more subjective
17 interpretations of qualifications, including those
18 pre-2008 exclusions could occur if the 2011 Rules as
19 promulgated are finalized.

20 The existing 2008 -- the existing pre-2008
21 solid hazardous exclusions are time-tested, and
22 they've been successful. They have encouraged
23 legitimate reclamation while being protective of the
24 environment. We support the agency's intentions to

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1 keep those exclusions intact and hope that the
2 proposed 2011 DSW regulations do not begin to
3 undermine those existing exclusions. Thank you very
4 much.

5 MS. ATAGI: Thank you. That concludes the
6 preregistered speakers. Is there anyone else who
7 would like to speak or explain their remarks today?

8 All right then. It is 1:15, and we'll go
9 ahead and adjourn until 2:00 o'clock. At that point,
10 we'll check to see if there's any more speakers who
11 have come, and we'll keep checking in every hour until
12 7:00 o'clock. Thank you very much.

13 (At 1:17 p.m., a short recess was had.)

14 MS. ATAGI: All right. It's about 2:00
15 o'clock. Is there anyone who would like to speak at
16 this time? If anyone has come in and has not signed
17 in, if you could stop by the registration desk and
18 sign in as an observer, we would appreciate it. We
19 will adjourn again until 3:00 o'clock, at which point
20 we will check to see if any speakers have arrived.
21 Thank you.

22 (At 1:59 p.m., a short recess was had.)

23 MS. ATAGI: We do have one speaker now. Just
24 as a reminder, when your name is called, please move

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1 to the microphone and state your name and your
2 affiliation. We may ask you to spell your name for
3 the court reporter. Testimony is limited to ten
4 minutes. We will hold up cards to let you know when
5 your time is getting low. When we hold up the yellow
6 card, you will have one minute left to speak. When
7 the red card is held up, your time is up and you
8 should stop speaking. After all registered speakers
9 are done, we will open it up for other speakers who
10 may wish to join us.

11 Next up is Becky Clayborn.

12 MS. CLAYBORN: Thank you. Thank you for
13 having public hearings on important environmental
14 issues. My name is Becky Clayborn. I'm a
15 representative for the Sierra Club's Beyond Coal
16 campaign. The Sierra Club has over 3 million members
17 and supporters in America. We believe that all
18 communities deserve clean air, clean water, and
19 healthy communities. We applaud the EPA for having
20 public hearings and for working to protect the
21 communities from hazardous waste. The Sierra Club
22 will be submitting official comments, but I wanted to
23 talk a little bit about specifically here in the
24 Chicago area what we're seeing.

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1 We work a lot with the environmental justice
2 communities of Pilsen, Little Village, and the
3 southeast side of Chicago, and we have found that
4 hazardous waste recycling areas -- facilities in these
5 -- in these areas. In the Pilsen and Little Village
6 areas, there are as many as 14 additional industrial
7 facilities in the community that may be operating
8 under exemptions in the federal law, and that poses
9 threats to the communities' air, water, and soil.

10 The Pilsen community already has ten sites
11 that required cleanup under the EPA Superfund program,
12 and with 100- to 500,000 pounds of chemicals released
13 each year in the zip codes of the Pilsen area, this
14 neighborhood is one of the most heavily polluted areas
15 in the cities. I will submit these two handouts. One
16 is about Pilsen and Little Village, and one's about
17 southeastern Chicago, but as you'll see from the map
18 -- you may have seen this already today -- the
19 southeast side of Chicago has the most toxic releases
20 in this area. And then some of the higher on the --
21 on the scale, but not quite the highest level, are the
22 Pilsen and Little Village areas.

23 These communities need federal regulations to
24 require full disclosure and safe handling of hazardous

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1 materials before and during recycling. As I mentioned
2 in Pilsen and Little Village, there are 14 additional
3 industries -- industrial facilities that are operating
4 under exemptions. On the southeast side of Chicago,
5 there are nine additional industrial facilities that
6 might be -- that may be operating under exemptions.
7 We urge the EPA to close the gap in federal
8 regulations that allow companies to recycle hazardous
9 materials without adequate safeguards.

10 Under EPA's 2011 Proposed Rule, these
11 facilities would be required to notify authorities of
12 the nature and quantity of hazardous waste recycled,
13 to store hazardous waste to prevent releases, to
14 comply with recordkeeping requirements, to ensure that
15 large quantities of hazardous waste are not
16 speculatively accumulated, and to document that all
17 hazardous waste recycling is legitimate. These
18 safeguards are essential to protect -- protect Chicago
19 communities from exposure to dangerous substances.

20 As I mentioned, I will give you these two
21 maps and the list of facilities, but I also wanted to
22 point out that I've been -- we've been working a lot
23 in the southeast side of Chicago lately with People
24 for Community Recovery, Southeast Environmental Task

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1 Force, and we yesterday announced an environmental
2 justice alliance with the five organizations on the
3 southeast side.

4 One of the maps that we have been looking at
5 is from the EPA's environmental justice database, and
6 it shows how many different hazardous waste sites,
7 toxics released inventories, Superfund sites. I'd
8 like to include this map, which I don't know if you
9 can see, but the little red squares are hazardous
10 waste sites on the southeast side of Chicago. It is
11 practically every other corner on the southeast side.
12 How that happens in a community, I don't know. And
13 I've been working with these people a lot. Their
14 houses are right next to all of these sites. Right
15 next to the Superfund sites.

16 I applaud EPA. We applaud EPA for their work
17 to help protect these communities. I urge the EPA to
18 do even more and protect them from these exemptions,
19 and thank you for your time.

20 MS. ATAGI: Thank you very much. Is there
21 anybody else who would like to speak at this time?
22 All right. We will go ahead and adjourn until
23 4:00 o'clock at which time we will check to see if
24 there are any further speakers. Thank you.

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1 (At 3:10 p.m., a short recess was had.)

2 MS. ATAGI: Is there anybody who would like
3 to speak at this time? Well, thank you very much. We
4 will adjourn until 5:00 o'clock, and we will check in
5 again. Thank you.

6 (At 4:01 p.m., a short recess was had.)

7 MS. ATAGI: Welcome back. We're reconvening
8 the DSW Public Meeting. We do have a speaker. When
9 your name is called, please move to the microphone and
10 state your name and your affiliation, and we may ask
11 you to spell your name for the court reporter.
12 Testimony is limited to ten minutes. We will hold up
13 cards to let you know when your time is getting low.
14 When we hold up the yellow card, you will have one
15 minute left to speak. When the red card is held up,
16 your time is up and you should stop speaking. When
17 you have completed speaking, please return to your
18 seat. Once all registered speakers have finished
19 speaking, then other folks may have an opportunity to
20 come talk or extend their remarks.

21 So our next speaker is Cheryl Johnson.

22 MS. JOHNSON: Good evening. My name is
23 Cheryl Johnson, and I represent People for Community
24 Recovery. We are a grassroots environmental justice

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1 group that's located on the far south side of Chicago.
2 It has been an environmental justice organization for
3 the past 32 years. I worked under the leadership of
4 Ms. Hazel Johnson who was considered a martyr in the
5 environmental justice movement. She passed this past
6 January, and I know that she would be totally
7 supportive of me coming here to speak today in regards
8 to any hazardous material recycling program being
9 developed because, most likely, it would be sited in a
10 community like ours.

11 My community is surrounded by 50 documented
12 landfills, maybe 200-some pollutant industries such as
13 chemical plants, manufacturing companies. We have 19
14 miles of waterway. 11 miles of it is unfit for human
15 consumption and recreation. It dates all the way back
16 to the 1880s. We've been an industrial site for the
17 midwest of -- the midwest of the United States.

18 So I'm here to oppose any definition that's
19 not going to protect human health and to look at the
20 priorities of the community that's already been
21 impacted by so many industrial or recycling or any
22 type of hazardous waste facilities that's in our
23 neighborhood. We have to really be concerned because
24 communities like ours, we already bear the burden, and

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1 most likely, any changes that's going -- to this rule
2 is going to have a quality effect on the life of the
3 residents in my community and in communities around
4 the country just like ours.

5 So I hope that when you take into
6 consideration whatever decision, that you look at
7 human health impact first, and that's foremost. You
8 cannot recycle your soul. You cannot recycle your
9 health. Once your health is affected, you know, you
10 need to get treated and maintain it, but it will never
11 be the same.

12 And I'm here just to testify on their behalf
13 and for my community that we are really concerned
14 about the definition of the solid waste proposed rule,
15 and we're not for it. Because anything that's going
16 to jeopardize -- jeopardize the quality of life of my
17 community or any community is just not right. Thank
18 you.

19 MS. ATAGI: Thank you very much. Is there
20 anyone else who would like to speak at this time? We
21 will adjourn until 6:00 o'clock. At that point, we'll
22 go ahead and leave the speaker open until 7:00 o'clock
23 where we will do our final adjournment for the day.
24 Thank you so much.

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1 (At 5:04 p.m., a short recess was had.)

2 MS. ATAGI: Is there anyone who would like to
3 speak at this time? We have another hour left in the
4 public meeting. If we have any speakers arrive, then
5 we will open it up for comments; otherwise, we will
6 adjourn at 7:00 o'clock.

7 (At 6:01 p.m., a short recess was had.)

8 MS. ATAGI: It is now 7:00 p.m. The DSW
9 Meeting is now closed.

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11 (Whereupon, at 7:00 p.m., the meeting
12 concluded.)

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4

5 I, RENAY PATTERSON-SEBANC, a

6 Certified Shorthand Reporter of the State of Illinois,

7 do hereby certify that I reported in shorthand the

8 proceedings had at the meeting aforesaid, and that the

9 foregoing is a true, complete, and correct transcript

10 of the proceedings of said meeting as appears from my

11 stenographic notes so taken and transcribed under my

12 personal direction.

13 IN WITNESS WHEREOF, I do hereunto set

14 my hand at Chicago, Illinois, this 21st day of

15 September, 2011.

16

17

18

19

20 RENAY PATTERSON-SEBANC, CSR, RPR

21 084.004206

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24

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